

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:09CR367
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
MARCOS LOPEZ-RODRIGUEZ,)	
)	
Defendant.)	

The Court has received the Modified Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 22). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement states that “[t]he defendant acknowledges that the sentencing enhancement provision of Title 8, United States Code, Section 1326(b)(2), applies in this case because he was convicted of An [sic] felony before his deportation.” (Filing No. 20, ¶ 4.) The Defendant now objects to the application of the § 1326(b)(2) enhancement in ¶ 12 of the PSR. The objection is denied.

IT IS ORDERED:

1. The Defendant’s objection to ¶ 12 of the PSR is denied;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 18th day of February, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge